

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of LAKE et al.

Application No. 10/600,280

Group: 1744

Date Filed: June 20, 2003

Examiner: Jastrzab, Krisanne Marie

For: DECONTAMINATION DEVICE

REPLY TO THE EXAMINER'S ANSWER

Applicants file this Reply to the Examiner's Answer mailed May 3, 2006 to request that Applicants' claims be read in light of Applicants' specification, and that the cited references be given an interpretation that is consistent with the teachings of these references. The Examiner's Answer indicates that this still has not been done. Applicants' claims require structure for removably engaging a housing to a portion of the medical apparatus, whereby, (a) the absorbent pad is placed into contact with a portion of the medical apparatus upon engagement and, (b) removed from contact upon disengagement. As defined in claim 2, this structure can be interlocking structure. The interlocking, as defined in Applicants' specification, is to permit the decontamination device to engage the medical apparatus such that the medical apparatus remains in contact with the decontaminating compound until use. None of the references of record disclose or suggest such a device.

Sigler teaches a portable device for decontaminating a pacifier using a closeable receptacle. Sigler does not disclose engagement of the pacifier to the portable device. Indeed, the Examiner repeatedly admits that Sigler is deficient in the regard. Examiner's Answer, page 6 ("Sigler is not relied upon to provide the engagement structure") and page 9 ("Sigler is not relied

upon for such engagement or interlocking, nor is such asserted in the rejection of the claims"). Instead, the Examiner offers Briggs, III et al., U.S. Patent Number 5,641,464 ("Briggs") to show engagement. The Examiner cites the diaphragm 60 of Briggs. No reasonable reading of Briggs will support the Examiner's position. Briggs nowhere teaches engagement of the stethoscope 58 by the diaphragm 60, nor is the diaphragm 60 ever suggested by Briggs to engage the stethoscope. The diaphragm 60 is briefly mentioned in only two places in the Briggs specification, as this is not a significant feature of the Briggs device. First, at column 2, lines 15-17:

The port preferably is in the form of an elastomeric iris which protects the clinician from the disinfecting spray.

The diaphragm is lastly mentioned at column 3, lines 32-36:

Port 25 may be provided with a flexible resilient closeable X-shaped or iris-shaped diaphragm 60 so that when head 27 is inserted into space 13, diaphragm 60 closes around tube 28 of stethoscope 58, sealing plate 40 from egress of aerosol spray from canister 15.

There simply is no disclosure or suggestion in either of these passages of engagement of the stethoscope. Further, any mention of engagement is also totally absent from the discussion of Briggs concerning the method of use of the Briggs device:

The method of the present invention utilizes the device of the present invention for disinfecting stethoscope heads. In accordance with the method, head 27 is first introduced into space 13, after which lever 11 is depressed so that liquid 62 is sprayed directly on head 27, disinfecting it, after which head 27 is withdrawn from space 13 and then wiped dry with a clean cloth, towel, tissue, or the like.

Briggs, et al. column 3, lines 64 to column 4, line 3. There is no discussion of engagement. There is no suggestion of engagement. There is no structure in Briggs for engaging the stethoscope. There is no step in the Briggs method of use that utilizes engagement. There is no discussion or suggestion of contacting the medical apparatus upon engagement with decontaminating compound. Briggs requires operation of the lever 11. The suggestion that

Briggs teaches engagement, and more particularly decontamination upon engagement, is simply an erroneous interpretation that is nowhere supported by the reference itself.

Applicants' claims are directed are not only to engagement, but engagement that maintains the device in contact with the decontaminating compound. There is no disclosure in Sigler of this concept or construction, as Sigler does not engage at all, and there is no disclosure or suggestion in Briggs. The Examiner attempts to cure this deficiency by suggesting that Applicants' invention would have been "well within the preview of one of ordinary skill in the art." And what exactly would such a combination be, reviewing these references and, for example, Sigler Fig. 2 and Briggs Fig. 2 ? A review of these references clearly indicates that such a combination is highly improbable, and would have been difficult even for someone skilled in the art to envision. Neither reference even discusses engagement and decontamination upon engagement, let alone provides motivation for engagement or instruction how to make such a combination, yet the Examiner contends that the teachings of these two references nonetheless would lead one of ordinary skill to make the combination. Sigler, as stated repeatedly by the Examiner, does not teach engagement at all. Similarly, an examination of the Briggs reference demonstrates that Briggs is totally devoid of any reference to engagement. Briggs requires operation of an aerosol, and it is for this purpose that the diaphragm is provided, to prevent the egress of aerosol, and not for engagement. Only in hindsight is such a combination even possible, let alone obvious.

The Examiner's entire position appears to rest on the notion that the flexible diaphragm "engages" the stethoscope because Briggs suggests that the diaphragm "closes around tube 28 of stethoscope 58, sealing plate 40 from egress of aerosol spray from canister 15." Applicants strongly object to this inaccurate interpretation of the reference - because something "closes

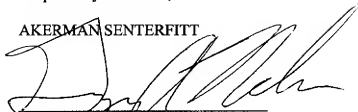
around" something, it does not necessarily engage it. A container does not "engage" its contents. It is a question of degree and the meaning given the words, and Applicants' specification makes clear the type of engagement that is contemplated. It must secure the housing to the medical device. The two pieces are connected together and the device holds the medical apparatus in contact with decontaminating compound on an absorbent pad. This is consistent with the dictionary definitions cited previously by Applicant. The Examiner mistakes the fact that the diaphragm 60 of Briggs may touch the stethoscope (the reference does not even expressly state this) for the conclusion that the diaphragm engages within the meaning and teaching of Applicants' specification. This is certainly not the teaching one skilled in the art would gain from the incidental disclosure by Briggs of a diaphragm, in the nature of a drape, to "prevent the egress of aerosol spray." This is the structure taught by Briggs, to prevent the egress of aerosol, and not to engage the stethoscope. The Examiner suggests that anything that touches another object necessarily engages it. This is not the meaning one of ordinary skill in the art would suggest based on basic engineering principles and terminology, and not the meaning taught by Applicants' specification.

Applicants are permitted to be Applicants' own lexicographers. It is Applicants' lexicography that is at issue here, and not that of the Examiner. By Applicants' teachings, the decontaminating device engages the medical apparatus. The Briggs diaphragm does not teach engagement within the meaning clearly taught in Applicants' specification, since Briggs does not

teach engagement at all. Applicant requests that the Examiner's rejections be overturned and that Applicants' claims proceed to registration.

Respectfully submitted,

AKERMAN SENTERFITT

A handwritten signature in black ink, appearing to read 'Gregory A. Nelson', is written over a horizontal line.

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